

1982 S.C. Op. Atty. Gen. 22 (S.C.A.G.), 1982 S.C. Op. Atty. Gen. No. 82-17, 1982 WL 154987

Office of the Attorney General

State of South Carolina

Opinion No. 82-17

March 17, 1982

***1 SUBJECT: Taxation, Warrant for Distrain or Execution**

1. For a Warrant for Distrain or Execution to be issued under the hand or the Tax Commission, it is sufficient that the agent's name for the Commission be typed or printed on the Warrant at his direction.
2. A Warrant for Distrain or Execution is under official seal if there is a witnessing or attestation clause that says that it is, even though there is nothing attached to or impressed upon the paper itself.

TO: Mr. Jasper E. Harmon, Jr.
Executive Director
South Carolina Tax Commission

QUESTIONS:

1. For a Warrant for Distrain or Execution to be issued under the hand of the Tax Commission, is it sufficient the agent's name for the Commission be printed or typed on the Warrant at the agent's direction?
2. If a Warrant for Distrain or Execution is to be issued under the official seal of the Tax Commission, is it necessary that the Commission's seal actually be attached to warrant for it to be under seal?

STATUTES:

South Carolina Code of Laws (1976), §§ 12-7-2450 and 19-1-160.

DISCUSSION:

1. There are several statutes that direct the South Carolina Tax Commission to issue Warrants for the collection of taxes. All have similar requirements. For purposes of this opinion, attention will be focused on § 12-7-2450. This Section provides in part: 'If any tax, interest or penalty imposed by this chapter, remain due and unpaid for a period of ten days, the Commission shall issue a warrant under its hand and official seal * * *.'

The term 'under hand and official seal' does not necessarily import that the individual attesting to such must or actually did sign the particular document with their own hand. To the contrary, the attester may direct their name to be written by someone else. Where the signature was written under such direction, it has the same effect as if the attester had signed their own name. See [Elston v. Montgomery](#), 90 N. E. 3, 242 Ill. 348.

Thus, if the attester's signature may be placed on a document by another, what then constitutes a signature? It was held in [Smith v. Greenville](#), 188 S. C. 349, 199 S. E. 416, that a 'signature may be written by hand, or printed, or stamped, or typewritten, or engraved, or photographed, or cut from one instrument and attached to another * * *. To sign means to attach a name, or cause

it to be attached, to a writing, by any known methods of impressing the name on paper with the intention of signing it * * *.' Therefore, if an individual's name is placed upon an instrument in any manner, it may be deemed to be a signature if so intended.

2. As previously stated, § 12-7-2450 directs the Warrant to be issued under 'official seal'. Hence, the Warrant is required to be a sealed document. However, this may be accomplished without physically attaching the Tax Commission's seal.

It has been held that a document is under seal if there is a witnessing clause that says that it is, even though there is nothing attached to or impressed in the paper itself. In [Wallinford v. Western Union Tel. Co.](#), 60 S. C. 201, 38 S. E. 443, 629, the Court ruled that 'whenever it shall appear from the attestation clause or other part of an instrument that the parties intended it to be a sealed instrument it shall be construed to be and shall have the effect of a sealed instrument, though no seal be actually attached * * *.' In [Wallinford](#), a deposition was not objectionable as lacking a notarial seal where the word 'seal' was attached to every jurat, and the attestation clause read, 'witness my hand and official seal'.

*2 A similar position is further set forth at § 19-1-160 which reads as follows:
'Whenever it shall appear from the attestation clause or from any other part of any instrument in writing that it was the intention of the party or parties thereto that such instrument should be a sealed instrument then such instrument shall be construed to be, and shall have the effect of, a sealed instrument although no seal be actually attached thereto.'

CONCLUSION:

1. For the South Carolina Tax Commission to issue a Warrant for Dstraint or Execution under 'its hand' it is not necessary such Warrant actually be signed by a duly authorized representative of the Tax Commission, only that such agent's name be placed on the Warrant with the intention of it being his signature. As noted, the name can be printed, stamped, typewritten, etc.
2. For a Warrant for Dstraint or Execution to be issued under seal of the Tax Commission, and thus constitute a sealed instrument, it is not necessary the Commission's seal be attached to or impressed in the Warrant itself. The document is under seal if there is a witnessing or attestation clause that says it is.

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